

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re A.M. et al., Persons
Coming Under the Juvenile
Court Law.

2d Juv. No. B295085
(Super. Ct. Nos. J071670,
J071671)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.M.,

Defendant and Appellant.

A.M. (father) appeals the juvenile court's order denying his petition for modification and terminating his parental rights to his minor children A.M. and Al.M. with adoption as the permanent plan (Welf. & Inst. Code,¹ §§ 366.26, 388). Father

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

contends the court erred in denying his modification petition and in finding that the beneficial parental relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)) did not apply. We affirm.

FACTS AND PROCEDURAL HISTORY

In November 2017, the Ventura County Human Services Agency (HSA) filed dependency petitions on behalf of A.M., born in March 2011, and Al.M., born in October 2012. The children were taken into custody after father was arrested for being under the influence of a controlled substance, possessing methamphetamine and drug paraphernalia, and identity theft. The petitions further alleged that father and the children's mother A.H. (mother), whose whereabouts were unknown, both had histories of substance abuse and regularly fought in front of the children.²

The children were ordered detained and were placed with the paternal grandfather in Palmdale. At the conclusion of the combined jurisdiction and disposition hearing, A.M. and Al.M. were declared dependents of the juvenile court and father and mother (who had been located in Los Angeles) were each awarded reunification services and supervised visitation.

In its report for the June 2018 six-month review hearing, HSA requested that reunification services be terminated as to both parents and that the matter be set for a permanency planning hearing with a permanent plan of adoption. HSA reported that mother and father had both been arrested and charged with unlawfully taking or driving a vehicle (Veh. Code, § 10851, subd. (a)), felony embezzlement (Pen. Code, § 508), and conspiracy to commit a crime (*id.*, §§ 182, subd. (a)(1)).

² A.H. (mother) is not a party to this appeal.

Methamphetamine and drug paraphernalia were found in father's car at the time of his arrest.

Father had also missed 10 out of 12 random drug tests and deliberately misled the social worker regarding the identity of his Narcotics Anonymous (NA) sponsor. The social worker reported that "[alt]hough . . . father has verbalized he is willing to do whatever it takes to reunify with his children, he had not put this into practice. During his only session with a therapist, he provided false information and requested a letter to excuse him from future therapy. . . . [F]ather has provided false information to the undersigned on multiple occasions. In working with him, it appears that he believed that dishonesty would allow him to take shortcuts to reunification, though the undersigned repeatedly informed him this was not the case."

At the contested six-month review hearing, father testified that he had not used methamphetamine since March and recently began participating in individual therapy. He also presented proof of his recent attendance at NA meetings.

In requesting that reunification services be terminated, counsel for HSA argued that "father . . . has basically wasted six months of family reunifications [*sic*] by attempting to manipulate and mislead the service . . . providers regarding the nature of his dependency and substance abuse. He has also attempted to deceive the social worker as to the feedback provided by service providers. . . . And [HSA] does acknowledge the fact that . . . father has maintained visitation with the children, but this [in] no way negates . . . the inactions and actions he has done in the last six months."

In joining in HSA's request, the minors' counsel offered that father "[is] worse off than he was six months ago when his

children were removed [¶] [H]e lied about his sponsor. He lied about his drug use. . . . I don't think I've ever seen a worse case of somebody just lying about every single service that was offered to him. . . . [¶] Not only did he lie, he didn't test. If he's had this epiphany all of a sudden when he had it why isn't he testing to show that he's clean and sober? He hasn't."

At the conclusion of the hearing, the court stated: "This is really a very unusual case because I rarely see somebody who has not been truthful with [HSA] to this degree. And that gives me great concern. I also have great concern that if Mother showed up at the door . . . you'd be using again. It sounds to me that you have made a choice for Mother over your children. I've listened to the evidence. I've read the reports and the documents that have been submitted, and I do not believe that there is any probability that [father] would be able to reunify within the next six months." The court terminated services and set the matter for a section 366.26 hearing.

Prior to the November 2018 section 366.26 hearing, father filed a section 388 petition requesting that reunification services be reinstated. In support of his petition, father offered that he had been sober since June and was regularly attending NA meetings and participating in individual therapy. Father also offered that he had recently enrolled in an outpatient treatment program and that he visited A.M. and Al.M. every day for an hour or two at the paternal grandfather's house.

The juvenile court ordered a hearing on father's section 388 petition and scheduled it on the date set for the contested section 366.26 hearing. Following a combined hearing, the court denied the section 388 petition and terminated parental rights to A.M. and Al.M. with a permanent plan of adoption.

In denying the section 388 petition, the court found that father had failed to meet his burden of showing changed circumstances and that reinstating services would be in the children's best interests. In terminating parental rights, the court rejected father's contention that the beneficial parental relationship exception to adoption applied.

DISCUSSION

Modification Petition (§ 388)

Father contends the juvenile court erred in denying his section 388 petition. We disagree.

Under section 388, a person with an interest in a child may petition a juvenile court to modify a previous order on the grounds of changed circumstances. (§ 388; *In re Nolan W.* (2009) 45 Cal.4th 1217, 1235.) The petitioner has the burden to show, by a preponderance of the evidence, a change of circumstances, and to show that the proposed modification is in the child's best interests. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; Cal. Rules of Court, rule 5.570(h)(1).) "We review the grant or denial of a petition for modification under section 388 for an abuse of discretion." (*B.D.*, at p. 1228.)

The court did not abuse its discretion. Father's assertion to the contrary focuses exclusively on the second prong of section 388, i.e., whether reinstating reunification services would be in A.M. and Al.M.'s best interests. He does not challenge the court's finding as to the first prong, i.e., that he failed to meet his burden of proving the requisite changed circumstances. In making that finding, the court stated that "[a]lthough Father is saying the right things, it is difficult to gauge [his] progress because he has not been trustworthy. He has previously denied the obvious, lied and even solicited and enlisted third parties to assist him in

deceiving [HSA] and the court. While he does appear to have remained free from drug abuse, and has ended his relationship with . . . mother, he has not shown enough change to support a finding that there has been a change of circumstance[s].”

Because father does not challenge this finding, his claim necessarily fails. In any event, the court did not abuse its discretion finding that father had failed to meet his burden of proving changed circumstances. At most, father demonstrated that circumstances were changing rather than changed. At the time of the hearing, he was in the early stages of treatment for his substance abuse problem and would not, in the foreseeable future, be able to provide A.M. and Al.M. a safe and secure home. (See, e.g., *In re Casey D.* (1999) 70 Cal.App.4th 38, 48-49 [nine months of sobriety insufficient to warrant section 388 modification]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423 [seven months of sobriety since relapse, “while commendable, was nothing new”]; *In re Angel B.* (2002) 97 Cal.App.4th 454, 463 [parent’s sobriety very brief compared to many years of addiction].) “Childhood does not wait for the parent to become adequate. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

Father also fails to demonstrate that the court abused its discretion in finding that the reinstatement of reunification services would be in A.M. and Al.M.’s best interests. The best interests of the child are of paramount consideration when a section 388 petition is brought after reunification services have been terminated. (See *Stephanie M.* (1994) 7 Cal.4th 295, 317.) In assessing the best interests of the child at this juncture, the juvenile court’s focus is on the needs of the child for permanence and stability. (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 309.)

In concluding that father had failed to meet his burden of proving that the requested modification would be in the children's best interests, the juvenile court reasoned: "The children are thriving while living with their grandfather who is assisted by the paternal aunt and uncle and the children are being offered permanency. . . . The children have a healthy bond with their father but they also have a strong attachment to their grandfather. If Father were to be given an additional six months of services, given the uncertainty of his future the children's stability would be imperiled. . . . While the grandfather would seem to be an appropriate alternative caregiver in the event Father is incarcerated, he has threatened that when the children are returned to him, he will move away and he will never let the relatives see the children again. . . . Father's conflict with his father and sister has resulted in them refusing to supervise his visits. As a result Father's visits have been significantly reduced. These actions do not bespeak a parent who is willing to put the needs of his children first. And six more months of services will continue to expose these children to Father's persistent attempts to undermine the relatives' and social worker's decisions concerning the children."

Father's brief makes no mention of this reasoning. Instead, he merely offers that the children have a healthy bond with him and enjoyed his visits. He does not explain how granting him an additional six months of reunification services would further the children's current need for permanency and stability. Moreover, there is no evidence in the record to support such a finding. The court thus acted well within its discretion in denying father's section 388 petition.

Beneficial Parental Relationship Exception
(§ 366, subd. (c)(1)(B)(i))

In terminating parental rights and selecting adoption as A.M. and Al.M.’s permanent plan, the court rejected father’s assertion that the relationship exception to adoption applied. Father contends the court erred in finding the exception did not apply. We are not persuaded.

“At a section 366.26 permanency planning hearing, the juvenile court determines a permanent plan of care for a dependent child, which may include adoption. [Citations.] ‘If the dependent child is adoptable, there is strong preference for adoption over the alternative permanency plans.’ [Citations.] In order to avoid termination of parental rights and adoption, a parent has the burden of proving, by a preponderance of the evidence, that one or more of the statutory exceptions to termination of parental rights set forth in section 366.26, subdivision (c)(1)(A) or (B) apply. [Citations.] The court, ‘in exceptional circumstances,’ may ‘choose an option other than the norm, which remains adoption.’ [Citation.] The parental benefit exception applies when there is a compelling reason that the termination of parental rights would be detrimental to the child. This exception can only be found when the parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. (§366.26, subd. (c)(1)(B)(i).)” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 394-395, italics omitted.) “We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling

reason for finding that termination would be detrimental to the child. [Citations.]” (*Id.* at p. 395.)

The juvenile court found that although father had maintained regular visitation with A.M. and Al.M., “[t]he evidence does not support that the children would be greatly harmed if all contact with their parents ceased. When interviewed about adoption the boys were told by the social worker that if they are adopted they may never see their parents again. Upon being given this information, neither child expressed any emotion or distress. . . . The children have never asked to be able to return to their Father. They express no sadness or emotional distress when the visits with their father end. There is no evidence the recent reduction in visits is having any adverse effect on the children. . . . [¶] . . . It is simply not enough that these children had lived with [father] before they were removed, or that the visits have been consistent and pleasant. There was no showing of any exceptional circumstances that would support a permanent plan other than adoption. These are still young boys who deserve a safe and permanent home. They do not deserve a tenuous placement simply to allow them to continue to have supervised, limited, but pleasant visits with their Father.”

The juvenile court did not abuse its discretion in finding that the parental benefit exception did not apply. The court correctly found that father had failed to meet his burden of proving the parent/child relationship “promotes the well-being of the child[ren] to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) In making this determination, “the court balances the strength and

quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*Ibid.*) The strong preference for adoption is overcome only “[i]f severing the natural parent/child relationship would deprive the child[ren] of a substantial, positive emotional attachment such that the child[ren] would be greatly harmed.” (*Ibid.*)

Father made no showing that the children would suffer great harm if his parental rights were terminated. He demonstrated, at most, that the children would benefit from continuing their relationship with him. The statutory scheme, however, “makes it plain that a parent may not claim entitlement to the [parental benefit] exception . . . simply by demonstrating some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349.) “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Id.* at p. 1350.) Father failed to meet his burden of proving this is such an extraordinary case.³

³ For the first time on appeal, father contends the court should have established a permanent plan of legal guardianship rather than adoption. This contention is forfeited and in any event lacks merit. “Once the court determines adoption is feasible, the less desirable and less permanent alternatives of guardianship and long-term foster care need not be pursued.” (*Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 249; *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1799.)

DISPOSITION

The judgment (order denying petition for modification and terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Tari L. Cody, Judge
Superior Court County of Ventura

Roni Keller, under appointment by the Court of Appeal, for
Defendant and Appellant.

Leroy Smith, County Counsel, Joseph J. Randazzo,
Assistant County Counsel, for Petitioner and Respondent.